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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

SHANNON ROZA-MIA DAVIS,

Civil No. 08-3097-CL

Plaintiff,

ORDER

v.

DARYN O'DELL DAVIS; et al.,

Defendants,

SAN DIEGO COUNTY DEPARTMENT
OF CHILD SUPPORT SERVICES,

Counter Defendant.

PANNER, Judge:

This action to determine the parties' interests in real property was removed from state court by defendant United States of America. The Pietrek defendants move for summary judgment as to their counterclaims and cross claims (#32) to foreclose their deeds of trust.¹

¹ Defendants United States of America; Jerome E. Pietrek and Carole F. Pietrek; Atlantic Refinance, LLC, and Atlantic Columbia, LLC; and the State of Oregon have appeared in this action. Defendants Daryn O'Dell Davis; Jane Hampton; Josh Hampton; William "Hank" Hampton, III; Thom J. Martin; San Diego County Department of Child Support Services; and William Henry Hampton, IV, individually and as personal representative of the estate of defendant Bette Hampton-Martin, deceased, have not appeared. Daryn O'Dell Davis was served at three addresses known to

Summary judgment "should be rendered, if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c).

At issue in this case is property including any improvements located at 1625 E. Main Street in Medford, Oregon (Property), which is owned by Daryn O'Dell Davis (Davis).

On April 4, 1996, Davis executed a \$100,000 promissory note and a \$85,000 promissory note in favor of the Peitreks, each secured by a trust deed on the Property. The trust deeds were recorded in Jackson County, Oregon, on April 8, 1996, as Document No. 96-10820 and Document No. 96-10821, respectively. Davis is in default of his obligations under the promissory notes. Currently due and owing are the amounts of \$109,913.78 including interest plus \$26.19 per day, and \$63,124.21 including interest plus \$13.13 per day, from November 1, 2008, until paid. The Pietreks paid for foreclosure guarantees in the amounts of \$475 and \$336.

A \$50,000 trust deed by Davis dated April 4, 1996, in favor of Bette Hampton recorded April 8, 1996, as Document No. 96-10822.

A \$127,500 trust deed by Davis in favor of Atlantic Columbia, LLC, recorded March 20, 2006, as Document No. 2006-013789. The beneficial interest in this trust deed was assigned to Atlantic Refinance, LLC, and recorded April 4, 2006, as Document No. 2006-017146. Atlantic Refinance foreclosed its trust deed on January 5, 2009, in a non-judicial foreclosure.

the parties and by publication. The record shows that all defendants have been served with the amended complaint and with the Pietreks' Answer, Counterclaims, and Cross Claims. Further, all parties, including non-appearing parties, have been served with the Pietreks' motion for summary judgment. Only the United States has responded to the Pietreks' motion.

The United States has an interest in the Property by virtue of federal income tax assessed November 27, 2006. A federal tax lien for \$210,063.06 against Daryn and Sharon Davis recorded February 11, 2008, in Jackson County as No. 2008-004885.

The State of Oregon has an interest in the Property by virtue of its tax assessment of December 12, 2006. State Tax Warrant No. R045673250 in the amount of \$62,106.10 against Daryn O. Davis and Sharon Davis in favor of the Oregon Department of Revenue entered August 9, 2007, as No. 2007-037700.

A judgment for child and spousal support against Davis and in favor of plaintiff Shannon Rozamia Davis was entered on March 5, 2008. A notice of lis pendens recorded in Jackson County March 12, 2008, as Document No. 2008-009417.

A lien for support in the amount of \$130,280.29 against Davis and in favor of the San Diego County Department of Child Support Services recorded May 8, 2008, as Document No. 2008-017750.

Shannon Roza-Mia Davis claims an interest in the Property arising by reason of a judgment of dissolution entered in the Superior Court of California for San Diego County on January 31, 2008. The judgment was registered as a foreign judgment in Jackson County, Oregon, case number 08-0947-D9 in 2008.

The priority of liens is determined, generally, by the principle of "the first in time is first in right." See Oregon ex rel. Director Veterans' Affairs v. Vickery, 299 Or. 315, 318 (1985); In re Priest, 712 F.2d 1326, 1327-28 (9th Cir. 1983), amended by 725 F.2d 477 (9th Cir. 1984); ORS 93.640. However, a tax lien arises at the time the tax is assessed, rather than when the lien is recorded. ORS 314.417; ORS 314.423; 26 U.S.C. §§ 6321, 6322, 6323.

Accordingly, as shown by the evidence of record, the Pietreks' liens take priority over the liens and interests claimed by the parties to this case, in the order detailed above.²

ORDER

Based on the foregoing, the Pietrek defendants' motion for summary judgment (#32) is granted.

IT IS SO ORDERED.

DATED this 10 day of June, 2009.

A handwritten signature in black ink, appearing to read "Owen M. Panner", written over a horizontal line.

Owen M. Panner,
United States District Judge

² The United States and the State of Oregon entered into a stipulation as to the priority of their respective liens (#39).